

Memorandum of Decision: 04-20170084R
Gross Retail Tax
For the Years 2014 and 2015

NOTICE: IC § 4-22-7-7 permits the publication of this document in the Indiana Register. The publication of this document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Memorandum of Decision.

HOLDING

Out-of-State Transportation Company demonstrated that it was entitled to refund of Indiana sales tax paid on leases of trucks and equipment used in public transportation, but was not entitled to a refund of sales tax paid to states outside of Indiana.

ISSUE

I. Gross Retail Tax - Public Transportation Exemption - Documentation.

Authority: IC § 6-2.5-2-1; IC § 6-2.5-5; IC § 6-2.5-5-27; IC § 6-8.1-5-4; [45 IAC 2.2-4-27](#); [45 IAC 2.2-5-61](#).

Taxpayer argues that it is entitled to a refund of sales tax paid to the state of Indiana on lease transactions involving truck and trucking equipment used in public transportation.

STATEMENT OF FACTS

Taxpayer is a transportation service provider that operates throughout the United States, including in Indiana. Taxpayer leases tractors, vans, and other vehicles and related equipment from third parties in order to provide these services to its customers. Taxpayer paid sales tax on the lease transactions that occurred in Indiana and elsewhere.

Taxpayer filed a claim for refund of \$41,935.13 for Indiana sales tax paid during the years 2014 and 2015. Taxpayer claimed that it was entitled to a refund of the sales tax paid on lease transactions involving equipment in Indiana because the transactions qualified for the public transportation sales tax exemption. The Indiana Department of Revenue ("Department") reviewed and denied Taxpayer's refund claim in full, stating that the supporting documents submitted by Taxpayer did not substantiate the basis for its claim for refund. Taxpayer submitted a protest challenging the denial and an administrative hearing was conducted during which Taxpayer explained the basis for its protest. This Memorandum of Decision results. Additional facts will be addressed below as necessary.

I. Gross Retail Tax - Public Transportation Exemption - Documentation.

DISCUSSION

Taxpayer claims that it is entitled to the public transportation sales tax exemption on lease transactions that occurred in Indiana. Sales tax is imposed by IC § 6-2.5-2-1, which states:

- (a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.
- (b) The person who acquires property in a retail transaction is liable for the tax on the transaction and, except as otherwise provided in this chapter, shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction. The retail merchant shall collect the tax as agent for the state.

With respect to rental or leasing transactions, [45 IAC 2.2-4-27](#) further provides:

- (a) In general, the gross receipts from renting or leasing tangible personal property are taxable. **This regulation [\[45 IAC 2.2\]](#) only exempts from tax those transactions which would have been exempt in an equivalent sales transaction.**

(b) Every person engaged in the business of the rental or leasing of tangible personal property, other than a public utility, shall be deemed to be a retail merchant in respect thereto and such rental or leasing transaction shall constitute a retail transaction subject to the state gross retail tax on the amount of the actual receipts from such rental or leasing.

(c) In general, the gross receipts from renting or leasing tangible personal property are subject to tax. The rental or leasing of tangible personal property constitutes a retail transaction, and every lessor is a retail merchant with respect to such transactions. The lessor must collect and remit the gross retail tax or use tax on the amount of actual receipts as agent for the state of Indiana. The tax is borne by the lessee, except when the lessee is otherwise exempt from taxation.

(d) The rental or leasing of tangible personal property, by whatever means effected and irrespective of the terms employed by the parties to describe such transaction, is taxable.
(Emphasis added).

Thus, lease transactions are subject to sales tax unless an exemption, found under [IC 6-2.5-5](#), applies. The public transportation exemption is found at IC § 6-2.5-5-27(a), which states:

[T]ransactions involving tangible personal property and services are exempt from the state gross retail tax, if the person acquiring the property or service directly uses or consumes it in providing public transportation for persons or property.

The rule is restated in [45 IAC 2.2-5-61](#), which states in relevant part:

(a) The state gross retail tax shall not apply to the sale and storage or use in this state of tangible personal property which is directly used in the rendering of public transportation of persons or property.

(b) Definition: Public Transportation. Public transportation shall mean and include the movement, transportation, or carrying of persons and/or property for consideration by a common carrier, contract carrier, household goods carrier, carriers of exempt commodities, and other specialized carriers performing public transportation service for compensation by highway, rail, air, or water, which carriers operate under authority issued by, or are specifically exempt by statute or regulation from economic regulation of, the public service commission of Indiana, the Interstate Commerce Commission, the aeronautics commission of Indiana, the U.S. Civil Aeronautics Board, the U.S. Department of Transportation, or the Federal Maritime Commissioner; however, the fact that a company possesses a permit or authority issued by the P.S.C.I., I.C.C., etc., does not of itself mean that such a company is engaged in public transportation unless it is in fact engaged in the transportation of persons or property for consideration as defined above.

(c) In order to qualify for exemption, the tangible personal property must be reasonably necessary to the rendering of public transportation. The tangible personal property must be indispensable and essential in directly transporting persons or property.

Taxpayer's refund claim was not denied due to a question as to Taxpayer's status as a public transportation provider or qualified use of the leased equipment at issue; thus this decision does not address those issues specifically. Rather, Taxpayer's refund claim was denied due to insufficient documentation of sales tax paid to the state of Indiana. IC § 6-8.1-5-4(a) provides:

Every person subject to a listed tax must keep books and records so that the department can determine the amount, if any, of the person's liability for that tax by reviewing those books and records. The records referred to in this subsection include all source documents necessary to determine the tax, including invoices, register tapes, receipts, and canceled checks.

In reviewing Taxpayer's original refund claim, the Department reviewed a sample of invoices provided by Taxpayer. The sampled invoices included transactions that did not occur in Indiana, and therefore did not show that Taxpayer paid the entire amount of sales tax claimed to Indiana. During the protest process Taxpayer provided a spreadsheet and accompanying invoices showing that sales tax was paid to Indiana. However, within those invoices there are instances of sales tax being paid to both Indiana and states other than Indiana, thus not supporting the entire refund amount claimed. To the extent that Taxpayer paid sales tax on lease transactions that occurred in the state of Indiana, Taxpayer is entitled to a refund of this amount. Taxpayer is not entitled to a refund of sales tax paid to states other than Indiana.

Therefore, the Enforcement Division is requested to review Taxpayer's documentation submitted during the protest. Based upon that review and on the findings contained within this Memorandum of Decision, Taxpayer may be entitled to the refund of sales tax only on those transactions that occurred in Indiana and in which Indiana sales tax was paid.

FINDING

Taxpayer's protest is denied in part and sustained in part, subject to the Department's supplemental review. To the extent that the documentation shows that Taxpayer paid Indiana sales tax on lease transactions, Taxpayer's protest is sustained. Taxpayer's protest is denied with respect to sales tax paid to states outside of Indiana.

Therefore, while this Memorandum of Decision represents the Department's decision on the protest, that decision will not be finalized until the Department recalculates the amount of Indiana tax paid, as described above.

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